

**FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., S.W.
Washington, D.C. 20554**

February 14, 2019

Copies sent by E-mail

NOTICE OF FORMAL COMPLAINT

MAW Communications, Inc.,)	
)	
Complainant,)	
)	
)	
v.)	Proceeding Number 19-0029
)	Bureau ID Number EB-19-MD-001
)	
PPL Electric Utilities Corporation,)	
)	
)	
Defendant.)	

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Dear Counsel:

On February 8, 2019, MAW Communications, Inc. (MAW) filed with this Commission a formal complaint against PPL Electric Utilities Corporation (PPL) under Section 208 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 208.¹ PPL should have a copy of

¹ Pole Attachment Complaint, Proceeding Number 19-0029, Bureau ID Number EB-19-MD-001 (filed February 8, 2019) (Complaint).

the Complaint as served by hand delivery by MAW on February 11, 2019. *See* 47 CFR § 1.734(c). If that is not the case, PPL immediately should contact Commission counsel.

Adam Suppes and I are Commission counsel for this proceeding. My phone number is (202) 418-7335, and my e-mail address is lisa.saks@fcc.gov. Adam's phone number is (202) 418-0324, and his e-mail address is adam.suppes@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing Section 208 formal complaint proceedings, which are found at 47 CFR §§ 1.720-1.740, as well as the additional rules relevant to pole attachment complaint proceedings, which are found at 47 CFR §§ 1.1401-1.1415.²

In reviewing the instant Complaint, we observed these procedural deficiencies:

- The Complaint lacks page numbers. All papers filed in formal complaint proceedings must conform to the requirements of 47 CFR §§ 1.49, 1.50, and 1.52. 47 CFR §§ 1.721(a). 47 CFR § 1.49(b) requires the inclusion of "a table of contents with page references." While the Complaint does include such a table of contents, the lack of page numbers in the Complaint renders that table ineffective.
- Exhibits to the Complaint are not Bates stamped or numbered sequentially, as required by 47 CFR § 1.721(k).
- The Complaint does not include the complainant's telephone number, as required by 47 CFR § 1.722(b).

Pursuant to our customary practice in such instances, we direct MAW to file an amended complaint in compliance with the Commission's rules by February 21, 2019.

² *See also Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 2018 WL 3495119 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. *See Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, Section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

Schedule for this Proceeding

The schedule for this proceeding is set forth below. All filings must comply with the Commission's rules and with this Notice.³

1) By March 13, 2019, PPL must file and serve an answer to the complaint that complies with 47 CFR § 1.726. Any interrogatories posed by PPL must be filed and served concurrently with the answer. 47 CFR § 1.730(a). Responses to any motions filed with the complaint should also be submitted with the answer.⁴

2) By March 25, 2019, MAW must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by MAW must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within 7 calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days after service. 47 CFR § 1.730(c).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should include the following matters: settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements. *See* 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by April 2, 2019. The parties may submit these two joint statements in a single document if each is separately identified therein. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97.

5) An initial status conference in this proceeding has been scheduled for April 12, 2019 at 11:00 a.m., at the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 CFR § 1.733. We strongly encourage each party to include in the conference a client representative with knowledge of the central facts and authority to settle the dispute. After

³ Staff has authority under Sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with Section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. *See* 47 CFR § 1.721(g), (k).

⁴ Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 2018 WL 3495119 *4, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules 'are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint.'" (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696); *Rule Consolidation Order*, 2018 WL 3495119 at *5, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . .")).

clearing security at the 12th Street entrance, the parties should call Adam Suppes at 418-0324 to be escorted to the conference. *See* 47 CFR § 1.733. **The parties also should be prepared to spend at least four hours in conference.**

6) The above schedule anticipates final action on the Complaint within 180 days of its filing. *See* 47 CFR § 1.1414(a).⁵ The Enforcement Bureau has discretion to pause the review period where actions outside the Commission's control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery or briefing. *See* 47 CFR §§ 1.740(b), 1.1414(a); *Wireline Infrastructure Order*, 32 FCC Rcd 11128 at 11133-34, para. 12; *Rule Consolidation Order*, 2018 WL 3495119 *8, para. 23. In light of the 180-day review period, we will be disinclined to grant requests for deadline extensions, absent a showing of good cause. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by May 24, 2019. The parties and their counsel should plan their schedules accordingly.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau Id Number referenced above (*see, e.g.*, 47 CFR § 1.7), and (b) be addressed to the Commission Secretary. If a party seeks to file both a public version and a confidential version of a submission, it should file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. *See* 47 CFR § 1.731. In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. *See* 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. *See* 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

⁵ Staff reserves the right to decide at a later time that all or part of the allegations in the Complaint are not subject to a 180-day deadline for access complaints and are instead subject to the 270-day shot clock for formal complaints. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 at 5 n.21 (2017) (*Wireline Infrastructure Order*). *See also Rule Consolidation Order*, 2018 WL 3495119 at *7, para. 20.

We issue this letter ruling under Sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, Sections 1.3, 1.720-1.740, and 1.1401-1.1415 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in Sections 0.111 and 0.311 of the Commission's Rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION



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